

APPEAL NO. 031199
FILED JULY 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 8, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the seventh and eighth quarters, and that the appellant (carrier) did not waive the right to contest the claimant's entitlement to SIBs for the seventh quarter. The carrier appealed the hearing officer's decision that the claimant is entitled to SIBs for the seventh and eighth quarters. The claimant responded, requesting affirmance. There is no appeal of the hearing officer's determination that the carrier did not waive the right to contest entitlement to SIBs for the seventh quarter.

DECISION

Reversed and remanded.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant contended that he had no ability to work as a result of his compensable injury during the qualifying periods for the seventh and eighth quarters. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The parties stipulated that the qualifying periods for the seventh and eighth quarters were from August 14, 2002, through February 11, 2003.

In arriving at his decision in favor of the claimant for the seventh and eighth quarters, the hearing officer found, among other things, that Dr. R letter of May 2, 2002, suffices as a narrative report explaining why the claimant cannot work, and that Dr. Z agreed that the claimant had no ability to work. In its appeal, the carrier correctly points out that the April 8, 2003, CCH record does not contain a May 2, 2002, letter from Dr. R, nor does it contain any reports from Dr. Z. The April 8, 2003, CCH record does contain the hearing officer's decision from a prior CCH held on January 14, 2003, in which the hearing officer decided that the claimant was entitled to SIBs for the first through the sixth quarters, and that decision was affirmed in Texas Workers' Compensation Commission Appeal No. 030555, decided April 18, 2003. The hearing officer's decision on SIBs entitlement for the first through the sixth quarters was based in part on his findings of fact that Dr. R's letter of May 2, 2002, suffices as a narrative report explaining why the claimant cannot work for all six quarters, and that Dr. Z agreed that the claimant had no ability to work. Neither the hearing officer's prior decision on SIBs

entitlement for the first six quarters nor Appeal No. 030555 sets out the content of Dr. R's letter of May 2, 2002.

In effect, the hearing officer has based his decision for the seventh and eighth quarters of SIBs entitlement in part on evidence that was not made a part of the April 8, 2003, CCH record, and for that reason we must reverse the hearing officer's decision that the claimant is entitled to SIBs for the seventh and eighth quarters and remand the case to the hearing officer for the hearing officer to make his determination of entitlement to SIBs for the seventh and eighth quarters based on the evidence that was admitted at the April 8, 2003, CCH. Since Dr. R's letter of May 2, 2002, is not part of the April 8, 2003, CCH record, it may not be considered on remand. Likewise, since the April 8, 2003, CCH record does not contain any reports from Dr. Z, his reports may not be considered on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge